

CONTRACT #14
RFS # N/A

Tennessee Board of Regents
East Tennessee State
University

VENDOR:
ARAMARK Educational
Services, Inc.



Tennessee Board of Regents

1415 Murfreesboro Road - Suite 350 - Nashville, Tennessee 37217-2833
(615) 366-4400 FAX (615) 366-4464 www.tbr.edu

January 23, 2007

RECEIVED

JAN 29 2007

FISCAL REVIEW

Ms. Leni S. Chick
Fiscal Analyst
Rachel Jackson Building, 8th Floor
Nashville, TN 37243

Dear Ms. Chick:

Enclosed please find an amendment to the agreement between East Tennessee State University and ARAMARK Educational Services which provides food services for the University.

Per Fiscal Review's request to see non-competitive amendments to competitive contracts and contracts that exceed the contract term, this contract must be approved by the Committee. **Please contact me regarding the date this will go before the Fiscal Review Committee and I will inform the representatives to insure they are present for the meeting in which the contract will be discussed.** If you have any questions, please do not hesitate to contact me at 366-4436.

Information regarding the contract may be sent to my attention at the Tennessee Board of Regents, 1415 Murfreesboro Road, Suite 350, Nashville, Tennessee 37217.

Sincerely,

Angela A. Gregory
Director of Purchasing and Contracts

cc: Charles Manning
Bob Adams
David Collins, ETSU

Austin Peay State University • East Tennessee State University • Middle Tennessee State University • Tennessee State University
Tennessee Tech University • University of Memphis • Chattanooga State Technical Community College
Cleveland State Community College • Columbia State Community College • Dyersburg State Community College
Jackson State Community College • Motlow State Community College • Pellissippi State Technical Community College
Roane State Community College • Southwest Tennessee Community College • Volunteer State Community College
Walters State Community College • Nashville State Technical Community College • Northeast State Technical Community College
The Tennessee Technology Centers



January 8, 2007

Dr. Charles Manning
Chancellor
Tennessee Board of Regents
1415 Murfreesboro Road, Suite 350
Nashville, TN 37217

Dear Chancellor Manning:

ETSU entered into a contract with ARAMARK Educational Services to provide food services to the ETSU campus for the period August 15, 2002 – August 14, 2007. ETSU followed appropriate purchasing guidelines and bidding procedures in awarding this contract.

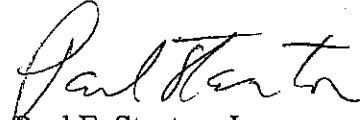
ETSU is currently in the beginning stages of a major renovation project to the D.P. Culp University Center that houses the majority of food service operations. This renovation project will replace all HVAC systems within the center as well as providing for cosmetic improvements. As a result of this renovation, it will be necessary to close the Atrium Food Court area from September 2007 through March 2008. This area houses the majority of our branded concepts such as Chick-fil-a, Quiznos and other major brands. We will be able to temporarily relocate a small portion of this area, but the closure is expected to have a major impact on the food service operations. ARAMARK has estimated that the closure will reduce sales by approximately \$800,000 and reduce net income by approximately \$125,000.

We believe that bidding a new contract at this time would be detrimental to the university. We are requesting a two year extension to the current contract. This extension will get us through the current renovation period and will provide one additional year at full operating activities that will help provide a realistic base line for the next bid cycle. It will also help ARAMARK recover some of their lost revenue. We feel that such an extension would be the most beneficial solution for all parties.

Attached are the required forms for an extension. We understand this will require approval by the Fiscal Review Committee and request your help and support in getting this accomplished.

If you have any questions or require additional information regarding this request,
please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul Stanton".

Paul E. Stanton, Jr.
President

enclosures

CONTRACT SUMMARY SHEET

021406

RFS#		Contract#	
State Agency		State Agency Division	
East Tennessee State University			
Contractor Name		Contractor ID# (FEIN or SSN)	
ARAMARK Educational Services, INC		C- or V-	
Service Description			
Provide Food Service to ETSU			
Contract BEGIN Date	Contract END Date	Subrecipient or Vendor?	CFDA #
15-Aug-02	14-Aug-09	Vendor	
Mark Each TRUE Statement			
<input type="checkbox"/> Contractor is on STARS		<input type="checkbox"/> Contractor's Form W-9 is on file in Accounts	
Allotment Code	Cost Center	Object Code	Fund
FY	State	Federal	Interdepartmental
03	\$ (502,809.00)		
04	\$ (519,417.00)		
05	\$ (536,759.00)		
06	\$ (554,867.00)		
07	\$ (573,774.00)		
TOTAL	\$ (2,687,626.00)	\$ -	\$ -
— COMPLETE FOR AMENDMENTS ONLY —		State Agency Fiscal Contact & Telephone#	
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	
08	\$ (2,687,626.00)	\$ (473,774.00)	
09		\$ (473,774.00)	
TOTAL	\$ (2,687,626.00)	\$ (947,548.00)	
End Date	8/14/2007	8/14/2009	
Contractor Ownership (complete only for base contracts with contract # prefix FA or GR)			
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/> Small Business
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> NOT disadvantaged
Contractor Selection Method (complete for ALL base contracts — N/A to amendments or delegated authorities)			
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method	
<input checked="" type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government (eg, ID, GG, GU)	<input type="checkbox"/> Other	
Procurement Process Summary (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)			
<p>This contract was bid in 2002 using approved bidding processes. Due to renovation in the DP Culp University Center which will require closure of some of the food service facilities, we are asking for a two year extension to the contract.</p>			

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #		
2) State Agency Name :	East Tennessee State University	
3) Service Caption :		
4) Proposed Contractor :	ARAMARK Educational Services, Inc.	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	August 15, 2002	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	August 14, 2009	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	(\$3,635,174)	
8) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
9) Description of Service to be Acquired :	Extend current 5 year agreement for food services by an additional two years	
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :	Contract to be extended without bid due to renovation activity in the DP Culp University Center requiring closure of a portion of the food service facilities	
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :	Yes. Competitive Bid	
12) Name & Address of the Proposed Contractor's Principal Owner(s) : (<u>not</u> required if proposed contractor is a state education institution)	ARAMARK Educational Services, Inc., 5775 Peachtree Dunwoody Rd. NE, Atlanta, GA 30342	
13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :	ARAMARK has been the provider of food services to ETSU for the past 10 years.	

14) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

16) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

Due to current renovation activity, a competitive bid would not be in the best interest of the state at this time. It is anticipated a more competitive bid can be obtained once all renovation activity is completed.

REQUESTING AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)

Agency Head Signature

Date

Charles W. Manning, Chancellor

Date

**AMENDMENT TO
UNIVERSITY FOOD SERVICE CONTRACT
BETWEEN
EAST TENNESSEE STATE UNIVERSITY
AND
ARAMARK CAMPUS SERVICES**

This amendment made this ____ day of _____, 2007 by and between EAST TENNESSEE STATE UNIVERSITY, hereinafter referred to as "UNIVERSITY" and ARAMARK EDUCATIONAL SERVICES, INC., hereinafter referred to as "CONTRACTOR."

WHEREAS, UNIVERSITY and CONTRACTOR have entered into an agreement to provide food services on the campus of UNIVERSITY for a period of five years running from August 15, 2002 through August 14, 2007, and

WHEREAS, UNIVERSITY has begun a renovation project in the D.P. Culp University Center that began in October 2006 and is expected to be complete in May 2008, and

WHEREAS, such renovation project will require the Atrium Food Court to be closed from September, 2007 through March, 2008 and is expected to have an adverse effect on cafeteria operations due to renovation work occurring in the building, and

WHEREAS, there is limited opportunity for relocating the food service facilities affected by the renovation, and

WHEREAS, the UNIVERSITY anticipates that a bid for a new food service contract during this renovation period would have an adverse effect on the results of the bid process, and

WHEREAS, CONTRACTOR has agreed to maintain operation during the renovation period, and

WHEREAS, CONTRACTOR estimates that due to the closure of the Atrium Food Court and limited access to the cafeteria, it expects sales to decrease by approximately \$800,000 causing a loss of profit of approximately \$125,000 to CONTRACTOR, and

WHEREAS, both UNIVERSITY and CONTRACTOR have determined that a two year extension to the contract would be in the best interest of both parties.

NOW THEREFORE BE IT RESOLVED that the UNIVERSITY FOOD SERVICES CONTRACT by and between EAST TENNESSEE STATE UNIVERSITY and ARAMARK EDUCATIONAL SERVICES, INC. is amended as follows:

Section 1.1 of the contract is hereby deleted and is replaced by the following: This contract shall have a term of seven (7) years, running from August 15, 2002 through August 14, 2009.

Section 5.1 of the contract is modified by adding the following to the end of the section:
Financial arrangements for the two year extension will be at the same commission rate and guarantee as for contract year 2007 with the exception that there will be no requirement for funding for a Facility Enhancement Fund.

Subject to the modification set forth in this amendment, the above referenced original agreement between EAST TENNESSEE STATE UNIVERSITY and ARAMARK EDUCATIONAL SERVICES, INC. is hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have caused these presents to be executed on the dates below indicated.

EAST TENNESSEE STATE UNIVERSITY

**ARAMARK EDUCATIONAL SERVICES,
INC.**

BY: _____
Paul E. Stanton
President

BY: _____
Thomas J. Dorer
Regional Vice President

Date: _____

Date: _____

TENNESSEE BOARD OF REGENTS

BY: _____

Title: _____

Date: _____

**UNIVERSITY FOOD SERVICES CONTRACT
BETWEEN
EAST TENNESSEE STATE UNIVERSITY
AND
ARAMARK CAMPUS SERVICES**

THIS CONTRACT is by and between EAST TENNESSEE STATE UNIVERSITY, hereinafter referred to as "UNIVERSITY," and ARAMARK EDUCATIONAL SERVICES, INC., hereinafter referred to as "CONTRACTOR."

WITNESSETH:

IN CONSIDERATION of the mutual promises herein contained, the parties have agreed and do hereby enter into this contract according to the terms and conditions set out herein:

1.0 TERM OF CONTRACT; TERMINATION; CONTACTS

- 1.1 This contract shall have a term of five (5) years, running from August 15, 2002 through August 14, 2007.
- 1.2 If at any time during the term of this contract, either party considers terminating the contract, such party shall give the other party written notice that it is considering such action, which notice shall set forth with sufficient specificity such party's reasons for contemplating termination. During the following thirty (30) day period, the parties shall discuss, in good faith, the party's reasons for considering termination in an effort to avoid the need for such action. Following the thirty (30) day discussion period, the party considering termination, if not fully satisfied, may elect to terminate the contract by giving the other party thirty (30) day's written notice of its intention to terminate.
- 1.3 If this contract is terminated by the CONTRACTOR prior to the expiration date of the contract other than in accordance with the provisions of Section 1.2 above, the UNIVERSITY may, at the UNIVERSITY's option, seek any and all remedies and/or damages; provided, however, that it is agreed and understood that the provisions of this Section 1.3 shall in no way be deemed an admission by the CONTRACTOR that the UNIVERSITY would be entitled to such remedies and/or damages in such instance.
- 1.4 UNIVERSITY may terminate this contract for convenience with ninety (90) days written notice.
- 1.5 This contract is subject to the annual allocation of state funding.

- 1.6 Contacts for matters relating to this contract are as follows:

ETSU CONTRACTUAL

David Collins
Associate Vice President
Business and Finance
P.O. Box 70714
Building C, Suite 500
Johnson City, TN 37601

ARAMARK CAMPUS SERVICES

Thomas J. Dorer
Regional Vice President
5775 Peachtree Dunwoody Road NE
Atlanta, GA 30342

ETSU OPERATIONAL

Tony Warner
Assistant Vice President for
University Center
P. O. Box 70692
Johnson City, TN 37614

2.0 CONTRACT DOCUMENTS

The entire contract between the parties consists of this contract, UNIVERSITY's Request for Proposal #5996, CONTRACTOR's proposal dated April 17, 2002, and any addenda and/or amendments to this contract hereafter executed. In the event of conflicting provisions, the documents shall be construed according to the following priority: (a) this contract (as amended), (b) UNIVERSITY's request for proposal, and (c) CONTRACTOR's proposal.

3.0 PREMISES UNDER CONTRACT

- 3.1 The facilities and services covered under this contract consist of the facilities and services included in the UNIVERSITY's Request for Proposal and CONTRACTOR's response thereto. As used hereinafter, the term FOOD SERVICE will be understood to include all said facilities and services as well as any others that may be added as defined in Section 3.2.
- 3.2 During the term of this contract, other temporary or permanent locations may become available and with the prior written consent of the UNIVERSITY and the CONTRACTOR, they may be utilized as a retail outlet.

4.0 VACATION OF PREMISES

Upon termination of this contract and any renewals hereof, the CONTRACTOR shall vacate premises and deliver premises to the UNIVERSITY in the same condition as at the time the CONTRACTOR took possession of premises, reasonable wear and tear excepted; provided, however, that the UNIVERSITY, by written notice, may require that any or all of the alterations, additions, and improvements to premises not be removed by the CONTRACTOR, the same being a part of premises; further provided, however, that the UNIVERSITY shall have complied fully with any buy-back or similar language relating to such alterations, additions and improvements. The foregoing sentence notwithstanding, provided the UNIVERSITY asserts no lien, the CONTRACTOR shall have the right upon termination of this contract to remove such furniture, furnishings, equipment, trade fixtures, and other personal property of the CONTRACTOR placed in or upon premises within fifteen (15) business days of termination or expiration of this contract; furthermore the CONTRACTOR shall, at its sole expense, repair any damage to premises caused by such removal.

5.0 COMMISSION PAYMENTS AND FINANCIAL ARRANGEMENTS

- 5.1 The CONTRACTOR shall operate the food services in accordance with the details, including prices, as contained in Meal Plan Option "A" of the CONTRACTOR's response. Meal plans for which a signed agreement was made before April 20, 2002 will be held harmless from the increased prices as detailed in Meal Plan Option "A". CONTRACTOR shall pay to the UNIVERSITY a minimum guarantee as well as commissions on net sales as detailed in the "Fiscal Arrangements" section of the CONTRACTOR's response based on the Meal Plan Option "A".
- 5.2 As used herein, "gross sales" shall mean all revenues from sales of CONTRACTOR (including sales of any assignee, subcontractor, concession or licensee of CONTRACTOR) based upon all business conducted in or from FOOD SERVICE, whether such sales be evidenced by check, cash, credit, charge account, exchange or otherwise and for services performed from or at FOOD SERVICE, together with the amount of all orders taken or received at FOOD SERVICE, whether such orders be filled from FOOD SERVICE or elsewhere. Gross sales shall not include the amount of any sales tax imposed by any federal, state, municipal or other governmental authority directly on sales and collected from customers, provided that the amount thereof is added to the selling price or absorbed therein, and actually paid by CONTRACTOR to such governmental authority. Each charge or sale upon credit shall be treated as a sale for the full price in the month during which such charge or sale shall be made, irrespective of the time when CONTRACTOR shall receive payment (whether full or partial) therefore.
- 5.3 As used herein, "net sales" shall mean the gross sales as defined above in Section 5.2 less the exclusions and deductions as also defined above in Section 5.2.

- 5.4 Details regarding the use of the Facility Enhancement Fund as contained in the CONTRACTOR's response will be agreed to in writing between the UNIVERSITY and CONTRACTOR. No capital improvement may be made without the express written consent of UNIVERSITY as detailed in Section 18.1. All such capital improvements shall be subject to a written agreement concerning the buy-back of such improvements by UNIVERSITY upon the termination of this contract for whatever reason by either party.
- 5.5 Within fifteen (15) days following the last day of each monthly accounting period, the CONTRACTOR shall submit to the UNIVERSITY a detailed operating statement indicating gross and net sales as defined herein for that month along with payment for one-twelfth (1/12) of the minimum annual guaranteed commission amount as well as amounts due through percentage calculations for commissions or sales in excess of minimum guaranteed amounts. The sales shall be reported in three (3) categories: Board Sales, Retail Sales, Concession sales and/or any other categories or schedule agreed to between the UNIVERSITY and the CONTRACTOR. Payment shall be by corporate check or electronic transfer as required by UNIVERSITY.
- 5.6 CONTRACTOR shall pay annually at the beginning of the contract year the sum of Twenty-Thousand Dollars (\$20,000) to be used towards the operating costs of the Campus ID System. If this contract is terminated by either party, for whatever reason, prior to the completion of a contract year, UNIVERSITY shall refund to CONTRACTOR the pro-rated balance of such payment.
- 5.7 CONTRACTOR shall reimburse UNIVERSITY for the full salary and benefit expense, including authorized yearly increases, of one UNIVERSITY employee who currently works in the BucMart Convenience Store operation. CONTRACTOR will be billed monthly.
- 5.8 On termination or expiration of the contract, commissions shall be paid to the UNIVERSITY on sales up to the final day the FOOD SERVICE is operated under this contract. The minimum annual guaranteed amount and percentage commission due the UNIVERSITY for any portion of a contract year shall be calculated on a pro-rated basis.
- 5.9 Any other amounts owed the UNIVERSITY by the CONTRACTOR shall be paid within thirty (30) days after the receipt of the invoice.
- 5.10 UNIVERSITY may charge the CONTRACTOR interest on any outstanding receivables thirty (30) days past due at the greater of (1) one percent (1%) per month or (2) the highest interest amount allowed by applicable state law.
- 5.11 The CONTRACTOR shall bill UNIVERSITY departments directly for all FOOD SERVICE purchases and services provided thereto. The UNIVERSITY has implemented a procurement card (Procard) program using a VISA card. The CONTRACTOR shall be required to accept the Procard as payment for University departments wishing to use the card in lieu of direct charge; provided, however, that the Procard may not be used to pay for meal plans hereunder.

- 5.12 The collection of payments, either directly at the time of sale or through charges or invoices, from the sale of all FOOD SERVICE services to individual UNIVERSITY students, faculty, and staff for their personal use, and to any other non-UNIVERSITY customers shall be the sole responsibility of the CONTRACTOR.
- 5.13 The CONTRACTOR shall be responsible for the collection of all receivables from the sales to the individuals and other customers indicated in Section 5.2 above.
- 5.14 The CONTRACTOR shall maintain appropriate internal accounting controls and keep full, complete, and proper books, records, and accounts of the CONTRACTOR's gross sales (as the term is defined herein), both for cash and on credit; said books, records, and accounts, including any sales or other tax reports that CONTRACTOR may be required to furnish to any government or governmental agency, shall at all reasonable times be open to the inspection of the UNIVERSITY, the Comptroller of Treasury of the State of Tennessee, or their designee for as long as such records exist but in no event less than three (3) years following the termination or expiration of this contract.
- 5.15 CONTRACTOR shall certify in an annual statement that the revenues due and paid to the UNIVERSITY were correct. The statement shall recap the CONTRACTOR's gross sales (as defined herein), and shall pay to the UNIVERSITY simultaneous with the submission of said statement any remaining amount of percentage commission or minimum guarantee which is payable to the UNIVERSITY as computed on the cumulative CONTRACTOR's net sales (as defined herein) that has not been paid. The statement shall be provided by the CONTRACTOR within two months after the close of the contract year.
- 5.16 The UNIVERSITY may, once in any contract year upon reasonable notice to CONTRACTOR, cause an audit of the business of the CONTRACTOR to be made by a certified public accountant of the UNIVERSITY's own selection, and if the statement of gross sales previously made by the CONTRACTOR to the UNIVERSITY shall be found to be less than 97.5 percent of the amount of the CONTRACTOR's gross sales shown by such audit and if percentage commission is found to be due, the CONTRACTOR shall pay for the cost of such audit as well as the additional percentage commission therein shown to be payable by the CONTRACTOR to the UNIVERSITY; otherwise, the cost of such audit shall be paid by the UNIVERSITY.
- 5.17 In the event that any statement of gross sales as used herein by the CONTRACTOR is found to be less than 97.5 percent of the amount of the CONTRACTOR's gross sales as shown by such audit and if percentage commission is found to be due, the UNIVERSITY may, as its option, conduct an audit for the next consecutive percentage commission period at the sole expense of the CONTRACTOR (the cost of which, however, shall not exceed the cost of the immediate preceding audit) irrespective of the results of such subsequent audit until and through such audit which reveals that gross sales as reported are not less than 97.5 percent of the CONTRACTOR's actual gross sales.

- 5.18 The CONTRACTOR warrants that no money or other item of value has been or shall ever be paid directly or indirectly to any officer or employee of the UNIVERSITY and/or the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to the CONTRACTOR in connection with any work contemplated or performed relative to this contract.

6.0 CONTRACT CHANGES

During the term of this contract, no change shall be permitted in any of the conditions and specifications in this contract unless both parties consent to such change in writing.

7.0 BONDING REQUIREMENTS

The CONTRACTOR will furnish a Financial Guarantee Bond, renewable annually for the life of the contract, in an acceptable form, or an irrevocable letter of credit, from a bonding institution in an amount equal to one hundred and ten percent (110%) of the annual minimum guaranteed payment. Bonds to provide such surety shall be executed by a resident agent of the State of Tennessee. The CONTRACTOR shall be responsible for the cost of the bond.

8.0 INDEMNITY

The CONTRACTOR shall indemnify and hold harmless UNIVERSITY, the Tennessee Board of Regents, and their officers, employees and agents: individually and collectively, from liability, costs, damages (including loss of use), expenses, demands and claims for injury or alleged injury to persons (including death) or damages or alleged damage to property, sustained or alleged to have been sustained as a result of CONTRACTOR's sole negligence in the performance of this contract by CONTRACTOR, its subcontractors, and their agents, servants, and employees. CONTRACTOR shall defend any suit or action brought against them, or any party, and shall pay all damages, judgements, costs, and expenses, including reasonable attorneys' fees in connection with said demands and claims resulting therefrom. UNIVERSITY agrees to immediately notify CONTRACTOR of all losses or claims for which it will seek indemnity under this contract. UNIVERSITY agrees not to incur any cost or expense with respect to any such loss or claim without the approval of CONTRACTOR and further agrees to fully cooperate with CONTRACTOR and CONTRACTOR's authorized representatives in the investigation, defense and settlement of all such claims.

9.0 PERMITS, LICENSES, TAXES, AND CERTIFICATE OF AUTHORITY

- 9.1 The CONTRACTOR shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all federal, state, and local governments under which this contract is performed.
- 9.2 The CONTRACTOR agrees to register with the Secretary of State of the State of Tennessee and furnish certification of authority to conduct business in the State.

9.3 The CONTRACTOR shall be responsible for any and all taxes and assessments arising out of the operation of the FOOD SERVICE, including but not limited to, payroll and personal property taxes, sales and use taxes, and income taxes.

9.4 The CONTRACTOR shall be liable for payment of all payroll taxes or deductions required by local and federal law, including but not limited to, old age pension, social security, or annuities. Worker's Compensation Insurance shall be carried to the full amount as required by Tennessee law.

10.0 SIGNAGE

Any existing exterior signage used will be retained and CONTRACTOR shall not be allowed to erect any additional exterior signs during the term of this contract except with the written permission of UNIVERSITY.

11.0 PARKING PERMITS

Employees of CONTRACTOR working in the FOOD SERVICE, and appropriate management personnel as approved by the UNIVERSITY, must purchase UNIVERSITY parking permits on the same basis as UNIVERSITY employees, except payroll deduction will not be available. CONTRACTOR shall submit names of employees who desire parking permits and appropriate information as requested by UNIVERSITY. CONTRACTOR may pay the parking fees (currently \$50) on behalf of its employees.

12.0 EQUAL EMPLOYMENT OPPORTUNITY, AFFIRMATIVE ACTION AND HARASSMENT

12.1 The CONTRACTOR agrees to comply with Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, Americans with Disabilities Act of 1990, and the related regulations to each. The CONTRACTOR agrees that it will not discriminate against any individual, including but not limited to, employees or applicants for employment and/or students because of race, religion, creed, color, sex, age, disability, veteran status or national origin.

12.2 The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed and that employees are treated during the employment without regard to their race, religion, creed, color, sex, disability or national origin. Such action shall include, but not be limited by the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection available to employees and applicants for employment.

- 12.3 Sexual and racial or any other type of harassment constitutes a form of discrimination prohibited by Title VII of the Civil Rights Act of 1964, as amended and Title IX of the Educational Amendments of 1972. The CONTRACTOR agrees to be responsible for any acts of sexual and racial harassment by its employees. The CONTRACTOR agrees to inform all of its employees and subcontractors and their employees that sexual harassment is a violation of federal law and UNIVERSITY policy, and will not be tolerated in the FOOD SERVICE or anywhere else on UNIVERSITY property. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. The CONTRACTOR agrees to remove from the FOOD SERVICE and UNIVERSITY property any of its employees or those of subcontractors who improperly conduct themselves in any manner toward UNIVERSITY students, employees or guests.
- 12.4 The CONTRACTOR agrees to establish a minority purchase and/or subcontract program.
- 13.0 ASSIGNMENT OR SUBCONTRACT
- 13.1 The CONTRACTOR may not assign or subcontract in whole or in part its obligations under this contract without prior written approval of the UNIVERSITY.
- 13.2 CONTRACTOR agrees that any sale, merger, corporate reorganization or change in majority ownership of CONTRACTOR's firm, or any significant change in the nature of CONTRACTOR's business, shall constitute a change in CONTRACTOR and that continuation of this contract after such a change shall be subject to this Section 13.
- 14.0 ACCEPTANCE, RESPONSIBILITY FOR, AND RETURN OF EQUIPMENT AND FACILITIES
- 14.1 The CONTRACTOR acknowledges that it has examined the present facilities of the FOOD SERVICE and storage and found them to be adequate.
- 14.2 An inventory of all equipment and fixtures shall be taken jointly in the presence of representatives of the UNIVERSITY and the CONTRACTOR prior to the CONTRACTOR assuming operation of the FOOD SERVICE; and an inventory listing shall be made an addendum to this contract.
- 14.3 The CONTRACTOR agrees to return to the UNIVERSITY at the expiration or on termination of this contract all furniture, equipment, fixtures, etc., furnished by the UNIVERSITY and any replacements of such equipment, which the CONTRACTOR shall have purchased only with UNIVERSITY consent, in the condition in which received, except for ordinary wear and tear, modifications, which shall have been made only with consent of the UNIVERSITY and said furniture, equipment, etc., which may have been lost or damaged as a result of the UNIVERSITY's sole negligence.

- 14.4 On any termination or cancellation of this contract, the CONTRACTOR shall promptly quit, and shall return for UNIVERSITY occupancy and use, all FOOD SERVICE space and shall be responsible for the return of said premises in the condition in which they were received, except for UNIVERSITY approved alterations, normal wear and tear, and any damage resulting from the UNIVERSITY's sole negligence.

15.0 INSURANCE OBLIGATIONS

- 15.1 The UNIVERSITY is only responsible for general property risks of accidental loss to the building, furniture, file cabinets, display equipment, and/or other equipment or furnishings owned by the UNIVERSITY and provided to the CONTRACTOR under this contract, except when caused by CONTRACTOR negligence. The CONTRACTOR shall be responsible for all risks to the stock, fixtures, furnishings, equipment, and all other contents of the FOOD SERVICE owned by the CONTRACTOR regardless of location.
- 15.2 The State of Tennessee prohibits the UNIVERSITY from providing, carrying, or maintaining commercial general liability insurance or medical, professional, or hospital liability insurance. Any and all claims against the State of Tennessee, including the UNIVERSITY or its employees, for injury, damage, expenses, or attorneys' fees, shall be heard and determined by the Tennessee Claims Commission in the manner prescribed by law. Damages recoverable against the UNIVERSITY shall be limited expressly to claims paid by the Claims Commission pursuant to Tennessee Code Annotated section 9-8-301 et seq.

16.0 WORKERS COMPENSATION AND COMPREHENSIVE GENERAL LIABILITY

The CONTRACTOR must provide Worker's Compensation Coverage for all employees as required by the Tennessee Worker's Compensation Law. In addition, the CONTRACTOR must secure a Comprehensive General Liability Policy in combination with Excess with Owner, Landlord's and Tenant's liability coverage providing \$3,000,000 per occurrence Combined Single Limits for Bodily Injury and Property Damage Liability. The policy shall also provide Fire Legal Liability with limits of at least \$100,000. The CONTRACTOR must also secure Automobile Liability Insurance of at least \$300,000 per occurrence Combined Single Limits for Bodily Injury and Property Damage Liability. UNIVERSITY shall be added as an additional insured on the liability policies with respect to the liability arising out of the performance of CONTRACTOR's work under this contract. The policies will contain a covenant by the company issuing the same that the policies shall not be canceled by the issuing company unless a thirty (30) day written notice of cancellation is first given to the UNIVERSITY. Notification of intent to cancel the policy shall be delivered to: V. P. Business and Finance, ETSU, P. O. Box 70601, Johnson City, TN 37614

17.0 UNIVERSITY'S RESPONSIBILITIES

- 17.1 The UNIVERSITY shall provide heat, light, water, electricity, chilled water, and sewer service; fire and smoke alarms; external security and custodial services in the University Center outside of the FOOD SERVICE space and exteriors of the building; and snow removal as is reasonably required for operation. The UNIVERSITY shall maintain these services and make every reasonable effort to avoid their disruption. In the event any service must be interrupted for repair or modification, the UNIVERSITY shall provide to CONTRACTOR's representative as much advance notice as possible. In the event of any such interruption or any disruption of services, the UNIVERSITY shall take such steps as it reasonably can to promptly restore them, but shall not be responsible for any loss sustained by the CONTRACTOR as a result of interruption of services from any cause.
- 17.2 The UNIVERSITY shall provide existing furniture, file cabinets, display equipment, safes, office machines, and the like now at the FOOD SERVICE and owned by the UNIVERSITY if desired to be utilized by the CONTRACTOR. The UNIVERSITY shall not be required to furnish any additional furniture, equipment, etc. and/or replace furnished items when no longer useable for whatever reason.
- 17.3 The UNIVERSITY shall provide all structural repairs to, and maintenance of, the building and fixed equipment, including attached lighting fixtures and any air conditioning and ventilating equipment required for the FOOD SERVICE.
- 17.4 The UNIVERSITY shall provide access to UNIVERSITY intra-campus mail without charge and to UNIVERSITY bulletin boards or appropriate notices relating to the FOOD SERVICE in accordance with UNIVERSITY policy.
- 17.5 The UNIVERSITY shall provide access to the UNIVERSITY telephone system at the same monthly line and equipment charges billed to UNIVERSITY departments plus applicable taxes.
- 17.6 The UNIVERSITY shall provide for external trash, garbage removal, and extermination services.
- 17.7 The UNIVERSITY will appoint a FOOD SERVICE Advisory Committee composed of faculty, staff and students whose charge shall be, as often as necessary, to review the FOOD SERVICE operation and policies. It is anticipated that the Committee and the CONTRACTOR shall share information and views regularly throughout the year.

18.0 CONTRACTOR'S RESPONSIBILITIES

- 18.1 The CONTRACTOR shall bear the costs of all expenses for any renovations, alterations, changes, or modifications initiated by the CONTRACTOR and agreed to by UNIVERSITY. All such capital improvements shall be subject to a written agreement concerning the buy-back of such improvements by UNIVERSITY upon the termination of this contract for

whatever reason by either party. Any modifications, renovations, alterations, or changes must be in compliance with all applicable UNIVERSITY, State, and Federal requirements. The CONTRACTOR must receive preliminary written approval from the appropriate UNIVERSITY official before proceeding with detailed plans and specifications.

- 18.2 If such approval is given, the CONTRACTOR must then submit detailed plans and cost estimates for proposed changes, with the names of any construction companies and principal suppliers to be involved. If further written approval is given by the appropriate UNIVERSITY and State officials, the project may proceed. A copy of the CONTRACTOR's receipt for payment for each renovation, alteration, or similar change shall be forwarded to the UNIVERSITY within thirty (30) days of payment.
- 18.3 The CONTRACTOR shall not allow the premises or any improvements thereon to become subject to any lien, charge, or encumbrance whatsoever.
- 18.4 The CONTRACTOR shall maintain properly and to the satisfaction of the UNIVERSITY the interiors of the FOOD SERVICE, including day-to-day cleaning of floors, stairways, walls, fixtures, furniture, and equipment.
- 18.5 The CONTRACTOR shall conform to fire, safety, traffic, parking, and other UNIVERSITY or statutory regulations as imposed on UNIVERSITY departments and activities and other contractual services on UNIVERSITY premises and their personnel.
- 18.6 The CONTRACTOR shall pay the UNIVERSITY within thirty (30) days of invoicing at its regular internal charge rates for any services provided by the UNIVERSITY upon the CONTRACTOR's request, including but not limited to, telephone and toll charges, security surveillance or the like within the FOOD SERVICE, maintenance, mailing, duplicating, and transportation services.
- 18.7 The CONTRACTOR shall cooperate with the UNIVERSITY's energy conservation coordinator for any building in which there is a FOOD SERVICE operation and shall comply in the FOOD SERVICE with the standards for heating, cooling, and lighting that are imposed on UNIVERSITY departments.
- 18.8 The CONTRACTOR may purchase any items of equipment or fixtures which in its opinion may be needed to operate the FOOD SERVICE. The CONTRACTOR shall secure the UNIVERSITY's approval in writing before making any physical modifications to install any CONTRACTOR equipment. Any equipment so purchased will remain the property of the CONTRACTOR and may be removed by it upon expiration or termination of this contract. The CONTRACTOR shall be responsible to restore the FOOD SERVICE facility to its original condition if any equipment which has been installed is removed.
- 18.9 The CONTRACTOR shall be responsible for all normal costs of doing business.

- 18.10 The CONTRACTOR shall handle disposal of FOOD SERVICE trash in accordance with UNIVERSITY guidelines, including but not limited to breaking down boxes, using trash bags, placing trash in appropriate dumpsters, recycling programs, etc.

19.0 PURCHASING, DELIVERY, STORAGE

- 19.1 The CONTRACTOR shall make all purchases in its own name and shall not in any way attempt to bind the UNIVERSITY in its contractual agreements. Any contract documents issued by the CONTRACTOR must be very clear that it is the CONTRACTOR that is being bound by the document, not the UNIVERSITY.
- 19.2 Delivery of merchandise to and from the FOOD SERVICE will be at the CONTRACTOR's risk and expense. The CONTRACTOR shall promptly unload and store any FOOD SERVICE shipments delivered to UNIVERSITY premises.
- 19.3 Storage of merchandise will be in the areas allocated for the FOOD SERVICE or such other premises as the CONTRACTOR chooses to use within the FOOD SERVICE or assigned space, and will be at the CONTRACTOR's sole expense and risk.

20.0 MANAGEMENT AND STAFF

- 20.1 The CONTRACTOR agrees to provide a fully qualified and experienced management staff for the FOOD SERVICE and to operate the FOOD SERVICE with policies and practices consistent with contracts of a similar nature and at least as indicated in its proposal.
- 20.2 The CONTRACTOR shall staff the FOOD SERVICE with experienced and qualified clerical personnel. The CONTRACTOR shall list part-time job opportunities suitable for students with the UNIVERSITY's student employment office and shall exert its best efforts to employ students. The CONTRACTOR shall pay wages and benefits and accept all employer liabilities for all FOOD SERVICE employees.
- 20.3 The UNIVERSITY reserves the right to review the credentials and qualifications of all personnel hired by the CONTRACTOR for management positions. The UNIVERSITY reserves the right to have the CONTRACTOR change the FOOD SERVICE Director and other management staff at UNIVERSITY's sole discretion upon presentation of reasonable justification.
- 20.4 The employees of the CONTRACTOR shall strictly adhere to UNIVERSITY regulations while on the UNIVERSITY premises, including, but not limited to, regulations governing access to buildings, personal conduct, possession of proscribed substances or articles, parking and traffic. Further, the UNIVERSITY reserves the right to require the removal of CONTRACTOR's employees from assignment on the UNIVERSITY campus for good cause.

The CONTRACTOR may, but is not required to, employ all current FOOD SERVICE employees who desire to remain in the FOOD SERVICE.

21.0 2002 CAPITAL INVESTMENT

ARAMARK agrees to expend an amount up to Five Hundred Thousand Dollars (\$500,000) for the purchase and installation of food service equipment, area treatments and other costs associated with the construction and installation of certain food outlets to be installed by ARAMARK on the University's premises as leased to and occupied by ARAMARK (the "Capital Investment"). An itemized list of the costs incurred will be attached to this Agreement as Exhibit "A", as these costs occur. ARAMARK shall amortize the Capital Investment on a straight-line basis over a period of five (5) years. Such amortization shall begin August 15, 2002. Upon expiration of the Agreement or termination or cancellation of the Agreement by either party for any reason whatsoever prior to the complete amortization of the Capital Investment the University shall reimburse ARAMARK for the unamortized balance of the Capital Investment. In the event such amount is not paid to ARAMARK within thirty (30) days of expiration, termination or cancellation, the University agrees to pay interest on such amount at the prime Rate plus two (2) percentage points, not to exceed the maximum rate allowable by law, computed monthly from the date of expiration, termination or cancellation to the paid date. Title to the equipment and area treatments purchased with the Capital Investment shall pass to University upon completion of amortization or earlier payment to ARAMARK of the unamortized balance.

22.0 APPLICABLE LAW

The CONTRACT is governed under, and the rights and obligations of the parties hereto shall be determined in accordance with, the laws of the State of Tennessee.

23.0 APPROVALS

This contract will not be effective until approved by the Tennessee Board of Regents.

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have caused these presents to be executed on the dates below indicated.

EAST TENNESSEE STATE UNIVERSITY

By: Paul E. Stanton⁹⁰
Paul E. Stanton

Title: President

Date: September 13, 2002

ARAMARK EDUCATIONAL SERVICES, INC.

By: Thomas J. Dore
Thomas J. Dore

Title: Regional Vice President

Date: September 9, 2002

TENNESSEE BOARD OF REGENTS

By: Charles Manning/pms
Name:

Title: Chancellor

Date: September 30, 2002